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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,397

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Soumya Roy

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30173

7590

11/28/2008

GENERAL MILLS, INC.

P.O. BOX 1113

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EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/799,397	Applicant(s) ROY ET AL.	
	Examiner VERA STULII	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6-19,23-45 and 57-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-19,23-45 and 57-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 6-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Navarro (US6, 312, 741) for the reasons stated in the Office action mailed May 16, 2008.

Claims 19 and 23-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Navarro (US6, 312, 741) for the reasons stated in the Office action mailed May 16, 2008.

Claims 35-45 and 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Navarro (US6, 312, 741) and Willyard et al. (US 4,929,464) for the reasons stated in the Office action mailed May 16, 2008.

Response to Arguments

Applicant's arguments filed August 4, 2008 have been fully considered but they are not persuasive.

On page 8 of the Reply to the Office action mailed May 16, 2008 applicants state that "the present application require an encapsulated acid having a mean particle size of about 150-840 microns. The Examiner admits that Narayanaswamy et al. does not teach a mean particle size of about 150-840 microns as claimed. The Examiner then turns to Navarro which teaches coated fumaric acid having a particle size from about 70

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to 140 microns. This particle size is outside of the claimed range". Examiner respectfully disagrees. Claim 1 recites the range of "about 150 microns to about 840 microns".

Navarro discloses particle size from about 70 microns to about 140 microns (Col. 3 line 52). It is noted that "about 140 microns" allows for the size slightly above 140 microns, and "about 150 microns" allows for the size slightly below 150 microns, and thus the ranges overlap. Therefore, the range of particle size as claimed is seen to be prima facie obvious in view of Navarro. In any case, one of ordinary skill in the art would have been motivated to modify the particle sizes of the capsule depending on the desired thickness of the particle coating and amount of the active substance contained therein.

On page 8 of the Reply applicants state that "the coated fumaric acid particles of Navarro preferably have a coating melting point of above 125°F. In contrast, the present invention requires a minimum melting point of 150°F as set forth in claims 18, 24, 57 and 62". In regard to this argument, it is noted that the range of above 125°F encompasses the minimum point 150°F, and therefore establishes prima facie case of obviousness.

On page 8 of the Reply applicants state that "[c]laim 35 is directed to a method of preparing a fried bakery product using a dried mix which is formed into a batter and deep fried to an internal cooked temperature of about 170-230° F. Neither Narayanaswamy et al. nor Navarro teach the step of deep-frying batter in oil to produce a fried bakery product having an internal cooked temperature of about 170°F as required by claim 35". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually

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where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Navarro (US6, 312, 741) and Willyard et al. (US 4,929,464) for the reasons stated in the Office action mailed May 16, 2008. Willyard et al. disclose fried donuts (Abstract), forming batter into a desired individual-serving size portions e.g. donuts (Col.3, lines 57-58), and immersing them in heated oil (Col.4, lines 12-14). Willyard et al. also disclose deep-frying such individual-serving size portions in oil having temperature of 350°F (Col.4, line 28). Therefore, Willyard et al discloses cooking temperatures in the range as recited. Regarding internal cooked temperatures recitation, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, such as internal cooked temperatures, this characteristic would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The combination of references disclose the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of the ordinary skill in the art would recognize that the internal cooked temperatures, among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the references has been applied to establish the case of obviousness, the burden thus

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shifts to applicant to demonstrate otherwise. Further in this regard, it is noted that the internal temperature of the product would depend on the individual portion size, shape, filling, desired color, taste, mouthfeel, crispiness, crunchiness, etc. Since, Narayanaswamy et al. disclose preparing "other cooked farinaceous goods", and Willyard et al. disclose deep-frying individual-serving size portions in oil, it would have been obvious to one of ordinary skill in the art to modify disclosure of Narayanaswamy and employ method steps discloses by Willard et al in order to produce desired fried bakery products.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

VS